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THE
AMERICAN LAW REGISTER.

OCTOBER, 1854.

THE SUPREME COURT OF THE U. S. IN 1853-4.

The legal enthusiast for the first time visiting the Capital, turns away from the noise and confusion of the political arena, with its party strifes and party schemes, to the quiet yet mighty scenes of the highest judicature of the land. Everything connected with the present and the past of that court, possesses for him a vital interest and a paramount import. Here is the forum of strict law, the mighty arbiter, between the conflicting commonwealths of this immense empire: to its bar, are brought the highest legal controversies of the land: hither, now, as from age to age of the past, come up the ablest lawyers of the confederacy, to try their strength upon the grandest field of professional ambition. It was of the trial of a great national cause in this tribunal, that William Pinckney said: "I meditate with exultation, not fear, upon the proud spectacle of a peaceful judicial review of these conflicting sovereign claims by this more than Amphictionic counsel. I see in it a pledge of the immortality of the Union, of a perpetuity of national strength and glory, increasing and brightening with age, of concord at home, and reputation abroad!"

Let us to that scene repair, if we can, amid the winding corridors of the basement of the Capitol, succeed in finding it. Taking

a seat at one of the tables, before the judges enter, we have an opportunity to take a look at the room. It is, indeed, small for such a Court, but certainly not so small, or so mean, as from report we expected to see it. Everything about it, is neat and legal looking—nothing gaudy or showy. The part where the judges sit, is divided from the bar, by a neat railing; within the bar are four tables, in two rows, for the use of the profession; outside the bar enclosure, are the seats for the visitors and spectators; beyond the railing, are the judges' seats, upon pretty nearly a level with the floor of the room, not elevated as are our judges' seats. By the side of the railing are nine neat desks, and behind them, as many comfortable high-backed chairs, for the use of the judges. At the right of the judges' seats, within a cloth screen, at his desk, sits Mr. Howard, the reporter of the decisions—at the extreme left, sits, at their desks, Mr. Carroll the clerk, and his assistant Mr. Middleton. In an alcove, back of the seat of the Chief Justice, and nearly up to the ceiling, is a small portrait of Chief Justice Marshall, the only painting and the only ornament we recollect to have seen, except a representation of the scales of justice, worked in marble on the opposite side of the room.

But it is twenty minutes after eleven, and the Court stands adjourned to eleven o'clock. Where are their honors? They are in the lobby, either consulting upon some disputed question, or waiting the arrival of the Chief Justice. There, by the clerk's desk, in his silk robe, is Mr. Justice Grier, chatting with the clerk, as democratically as the humblest practitioner, and smiling as joyously as if the fugitive slave law had never been administered by him—looking as contented and little concerned as if the duties of the highest judicial station were mere pastime to him. A messenger says a word to him, and he hurries back to the lobby—the judges have all arrived, and are ready to enter the Court. Advancing in their robes, one behind the other, they proceed to their respective seats, bowing to the attendant as they pass him. The crier announces, that the Supreme Court of the United States is in session. Now, we behold the nine judges of the Court in full array before us. Beginning at the right hand, is Mr. Justice Campbell,

of Alabama, the latest appointment; an earnest intellectual looking man, with long face, and forehead slightly bald, a man of not more than fifty or fifty-two, an exceedingly able man, of whom the largest expectation will not be disappointed. Next to him on the left, is Mr. Justice Daniels an older man, in his prim wig and spectacles—next to him, is Mr. Justice Wayne, with his cheerful and ruddy face, and hair slightly gray—decidedly the best looking man upon the bench. By his side, is the Chief Justice Taney, broken in health and unattractive in personal appearance, but unquestionably the strongest man upon the bench. Next is Mr. Justice McLean, of Ohio,—a large, noble-looking man,—bold and fearless: looking the personation of the upright Judge. By him, is Judge Nelson, of New York, short and slender built, looking kindly upon all. Next, is Justice Catron. At the extreme left, is Judge Curtis, of Massachusetts. Mr. Justice Curtis, though only of middle age, when a seat upon the Supreme Court was made vacant by the lamented decease of the late Justice Woodbury, the professional judgment of New England, turned to but one man for the place, and the doubt was not whether he would have the offer, but whether he would accept it. The promotion was doubly flattering to him, as it was a tribute solely to his professional ability, he having rendered little of merely political service. The good opinion thus formed of him, has been more than fulfilled. We speak from report, but have reason to believe we speak truly, when we say that during the first term after his appointment, he took rank with the first of the bench, for sureness of judgment, keenness of analysis and accuracy of legal research.

Owing to the declining health of the Chief Justice, Mr. Justice McLean, the oldest member of the Court next to him, performs the more active duties of chief, and for them, he is exceedingly well fitted. His style upon the bench, is the perfection of judicial elocution, and his merits reach very much beyond mere manner. We heard him deliver an opinion upon a nice legal question, of an hour a half, of great learning and grasp of thought, indicating his profound study of jurisprudence and familiar acquaintance with all the handmaids of art, science and letters, calculated to adorn and

embellish the judicial character. We also heard a dissenting opinion of Judge Campbell, upon the same question, of nearly equal length: it was learned, exhaustive, bold and independent: and withal enriched with ripe scholarship.

It is the last day of the term, and we shall not have an opportunity to hear any arguments. Some few opinions will, however, be delivered, and this will bring within the bar, some of the lawyers who have been in the Court during the term. For instance, there is—Reverdy Johnson, of Maryland—Stansbury, of Ohio—Stroude, of California—Chase, of Ohio, and on the back seat of the spectators, is Mr. Badger, of North Carolina, a man of great legal reputation at home and at Washington.

Yonder, you see the representative of the government in the Court and the legal adviser of the administration, the Attorney General. Whatever may be said of him by his enemies and his rivals, no candid man, acquainted with his studies and his acquirements, will hesitate to concede to him the very first natural and acquired ability in professional, public and literary life. We have now to do with him only as a lawyer, and the wonder with us has always been, that amid so varied a career, he has become so able a jurist. While upon the Supreme bench of Massachusetts, he surprised all with the extent and accuracy of his legal learning, and by his independence and urbanity, bound the whole bar to him in respect and esteem. Whatever may be said of him by his political foes, we unhesitatingly declare, that he left the bench with the sincerest good will of all who have practised before him, and the profound regret of the whole profession of the State. He is said to discharge the duties of his high office, with great ability, faithfulness and laborious industry: and to be daily adding to his already well established name, as a lawyer of the first class.

Next to the Attorney General, should be named one who has the largest practice in the Supreme Court, and indeed richly deserves it by his matchless ability—Reverdy Johnson. Indeed we heard it asserted, that he has a much larger practice than Pinckney in his best days. We much regretted not having an opportunity of hearing him, so that we must speak only from report: but report speaks only one

way of him, ranking him as the genuine successor of Pinckney, than which no higher name could be bestowed upon an American advocate. Though he has not the reputation of brilliant eloquence, he is possessed of the kind of oratory exactly fitted for law arguments before the Supreme Court, a plain, simple, forcible, powerful address. His opinion upon a difficult law question we should think, might safely be put by the side of any other lawyer upon the American Continent. This we are aware is high praise, but we think it the general judgment of all acquainted with his great merit and ability.

Mr. Stansbury of Ohio, has, during the past term, been frequently before the Court, and with uniform reputation. He stands among the first lawyers of his State, if not at their very head. He is a man of great strength of mind and profound legal acquirements: he is, too, a modest, unassuming man, a perfect gentleman. We heard it stated (though upon what knowledge we cannot say) that his income from the single term of the Supreme Court, probably reached \$10,000. Whether this be so or not, it is certain his reputation in the Court is immense, and is upon the increase.

The Suffolk bar of Massachusetts during the present term, has been ably represented at the national tribunal. Early in the term, Messrs. Whiting and Curtis of Boston, argued upon opposite sides the patent case of *Artemas L. Brooks vs. John Fisk and N. G. Norcross*—upon the subject of Woodworth's Planing Machine, with great ability and great credit to themselves. The argument of Mr. Whiting, has been reported, and freely confirms the only opinion we heard expressed of it, by those who listened to it, that it was an argument every way worthy of a lawyer on his way to the first ranks of his profession, if he has not already attained that goal—Mr. Bartlett at a subsequent part of the term argued a case of large importance. We do not recollect to have inquired as to his success, but no one familiar with his legal talent can question, but that he did the bar, his cause and himself ample justice.

These are at present, the most prominent leaders of the federal bar: from the nature of the case, it is now almost impossible that any one man should become the hero of the Court, as was Pinck-

ney. There is, we think, less of great litigation to call forth such a man; there is a greater number of great men at the State bars, having a local reputation which would insure them a retainer in every case of importance from their locality. Great legal reputation in members of either branch of Congress, also commands retainers in the Supreme Court. Mr. Seward, Mr. Chase and Mr. Badger, of the Senate, occasionally appear there, and have established a good reputation, as also Mr. May, of the House.

The immediate proximity of Baltimore would generally give to a great lawyer there, the best opportunity of practising in the Supreme Court—hence, beside his great ability, the leading practice of Mr. Johnson. It must always be extremely inconvenient for leading practitioners at a distance, to attend upon the Court—the sacrifice of time and local retainers, more than equalling the emolument of a single retainer or a few retainers in the federal forum. Hence it is, doubtless, that the first of New England lawyers, if not the greatest living American lawyer, has so seldom appeared there. We certainly trust, that notwithstanding the embarrassment to local practice, Mr. Choate, who has so nearly equalled the fame of Pinckney in all other forums, may yet like him, as the crowning honor of his forensic career, write his name by his side in the rolls of the national tribunal.

This review of the present leaders of the Supreme Court, naturally suggests the retrospect of the past—its heroes who have passed away,—Sergeant, Wells, Emmett, Dexter, Martin, Rawle, Binney, Wirt and Pinckney, and a host of others, with almost their only surviving contemporary, Walter Jones. How everything connected with the Supreme Court, brings back to the legal student, Pinckney and Wirt! After leaving the Court we drove to the Congressional Burying-ground, to get a sight at the last resting-place of the mortal remains of these first of American lawyers. It is indeed a beautiful spot, covered with magnificent monuments—but strange to tell, no magnificence tells the stranger the spot where they rest! Indeed, among a half-dozen at the Cemetery, we could find no one who ever *heard of them!* or who knew where they rested! At last we came across one, who, in answer to the ques-

tion of where William Wirt was laid, pointed us to a spot where the foundations of a monument had been recently laid—raised about a foot from the level ground, and covered over with rough boards. We learned from him that until last winter, Wirt's remains had been deposited in a distant part of the grounds, and not even a tomb-stone had been erected during the twenty years since his decease! but that at that time, his son (a physician of Virginia) had had them removed to their present locality, and was about erecting a splendid monument to his father, at a cost of over six thousand dollars. All honor to such a son, of such a father! But William Wirt needs no brass or marble to perpetuate his name and fame; his brilliant career is familiar to every American, and the crowded record of his glorious life, has been given to posterity in the beautiful biography of Mr. Kennedy.

We then desired to be shown the spot where Pinckney rested. On being told that he was a member of Congress, the attendant was able to give us a general idea of his local habitation. Proceeding to some half-dozen rows of small monuments, we found the place where are buried Congressional characters. After looking for some time, we found the simple tomb-stone, inscribed with these simple words—"In memory of the Hon. William Pinckney, a Senator in the Congress of the United States from Maryland; died February 25th, 1832, aged 58 years." Such is the simple record upon his tomb, but his great name is on every lip, and his great fame will be the proud heritage of the legal profession of America for all time. When will the professional life of William Pinckney find a biographer worthy the theme and the man?

It is quite time to bring these hurried notes to a close. Much degeneracy as we find in the American Congress, and much as is lowered the standard of professional excellence, at most if not all of our State Bars, and sadly as the National Bar has declined since the day when Pinckney swayed it like a monarch, or the later day when he found his laurels endangered by the rising genius of Wirt and Emmett—or still later period when the giant strength of Webster illumined the discussions, we strongly incline to its opinion that the bench of the Supreme Court, for learning, strength, and

accomplishments, will well bear comparison with any past days; and in saying this, we not in the least desire to derogate from the strength of Marshall, or the exhaustless learning of Story. These were great men; perhaps their equals, in all particulars, do not exist upon that bench; but the united bench we still think equal to any past period of its history. S.

Boston, Massachusetts.

RECENT AMERICAN DECISIONS.

In the District Court of the United States, for the Western District of Virginia, holden at Wytheville, 1853—In Equity.

JOHN VINT vs. THE HEIRS OF SAMUEL KING AND OF JOHN ALLEN AND HANNAH HIS WIFE ET AL. (Original and Supplemental Bill.

ALEXANDER FINDLEY vs. JOHN VINT ET AL. (Cross-bill.)

HANNAH ALLEN'S HEIRS vs. JOHN VINT ET AL. (Cross-bill.)

DANIEL SHEFFEY'S ADMINISTRATOR AND HEIRS vs. JOHN VINT ET AL. (Cross-bill.)

1. Construction of Will—Legal and equitable estate—Condition subsequent—Resulting trust—Alienage and naturalization—Mere possibility distinguished from equitable estate—Abeyance—Bills of partition substituted for writ of partition—Difference in measure of relief, when jurisdiction of equity concurrent with, and exclusive of, that of the courts of law. Fraud never presumed—Inadequacy of consideration not a ground to set aside a contract of hazard—Recitals in a deed—whether time is of the essence of a contract—A receipt *prima facie* evidence—Answer, when evidence—Issue out of chancery—Laches—Creditor at large—Assignor and assignee—A will contained the following clause: "In case of having no children, I then leave and bequeath all my real estate, at the death of my wife, to W. K. son of brother J. K., on condition of his marrying a daughter of W. T. and my niece R. T. in trust for the eldest son or issue of such marriage." W. T. and his wife both died without having had a daughter born to them, whereby the performance of the condition on which W. K. took the estate, became impossible. Held by the Supreme Court of the United States: 1. That this clause vested in W. K. the legal estate in fee simple, on a condition subsequent. Findlay et al. vs. King's Lessee, 3 Peters Rep. 346. 2. But W. K. took no beneficial estate in fee, but an estate in trust for his issues, springing from his intermarriage with the unborn daughter of a husband and wife, both of whom died without the birth of a daughter, and that the trust having failed, there remained a resulting trust to the heirs at law of the testator, who were entitled to partition. King vs. Mitchell et al. 8 Peters Rep. 326.